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Internal Revenue Service

Department of the Treasury

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408.03-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
OP:E:EP:T:3

Date:

AUG 5 1999

LEGEND:

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

IRA X:

Company W:

Sum Y:

Dear :

This is in response to the , correspondence submitted by your authorized representative, as supplemented by correspondence dated , in which you, through your representative, request several letter rulings under section 408(d)(3) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A, died on Date 1 prior to attaining age 70 1/2. At the time of his death, Taxpayer A was married to Taxpayer B whose date of birth was Date 2. Taxpayer B, who has not attained age 70 1/2, survived Taxpayer A.

At his death, Taxpayer A maintained IRA X with Company W. The value of IRA X at Taxpayer jp2
A's death was approximately Sum Y. Taxpayer A had not received any distributions from IRA X prior to his death.

Taxpayer A named his estate as the beneficiary of IRA X. Taxpayer B was named the sole personal representative of the estate of Taxpayer A.

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Article III of Taxpayer A's last will and testament (will) provides, in pertinent part, that one-half of the rest, residue and remainder of Taxpayer A's estate shall be distributed to his wife (Taxpayer B), if she survives him, otherwise this bequest shall lapse.

Article X of Taxpayer A's will, in pertinent part, gives his personal representative the power to allocate any real or personal property, not specifically bequeathed, to and among his residuary legatees.

Taxpayer B, as personal representative of the estate of Taxpayer A, intends to direct Company W to reflect on its records that the estate of Taxpayer A is the beneficiary of IRA X and, as such, is entitled to receive distributions from IRA X. Furthermore, she, as personal representative of the estate of Taxpayer A, then intends to direct the trustee of IRA X to transfer IRA X proceeds sufficient to satisfy Taxpayer B's bequest under Article III of Taxpayer A's last will into an IRA set up and maintained in the name of Taxpayer B. Said transaction will take the form of a trustee-to-trustee transfer. No IRA X amounts will be distributed to Taxpayer B prior to being placed in an IRA maintained in the name of Taxpayer B.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

(1) That, to the extent IRA X is used to satisfy the bequest to Taxpayer B under Article III of Taxpayer A's Last Will and Testament, IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i); and

(2) to the extent that the IRA X distribution is transferred to an IRA set up and maintained in the name of Taxpayer B, said transferred amount will not be included in Taxpayer B's gross income for the year in which transferred.

With respect to your ruling requests, Code section 408(d)(1) provides that, except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 408(d)(3) provides that section 408(d)(1) does not apply to a rollover contribution if such contribution satisfies the requirements of sections 408(d)(3)(A) and (d)(3)(B).

Code section 408(d)(3)(A)(i) provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if the entire amount received (including money and any other property) is paid into an IRA (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution.

Code section 408(d)(3)(C)(i) provides, in pertinent part, that, in the case of an inherited IRA, section 408(d)(3) shall not apply to any amount received by an individual from such account (and no amount transferred from such account to another IRA shall be excluded from income by reason of such transfer), and such inherited account shall not be treated as an IRA for purposes of determining whether any other amount is a rollover contribution.

Code section 408(d)(3)(C)(ii) provides that an IRA shall be treated as inherited if the individual for whose benefit the account is maintained acquired such account by reason of the death of another individual, and such individual was not the surviving spouse of such other individual. Thus, pursuant to Code section 408(d)(3)(C)(ii), a surviving spouse who acquires IRA proceeds from and by reason of the death of her husband, may elect to treat those IRA proceeds as her own and roll them over into her own IRA.

Section 1.408-8 of the Proposed Income Tax Regulations, Q&A A-4, provides that a surviving spouse is the only individual who may elect to treat a beneficiary's interest in an IRA as the beneficiary's own account. If a surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A) rather than those of section 401(a)(9)(B). Q&A A-4 further provides, in pertinent part, that an election will be considered to have been made by a surviving spouse if either of the following occurs: (1) any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an IRA for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The

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result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

Q&A A-6 of section 1.408-8 of the proposed regulations provides that if a surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-4.

Q&A A-4 of section 1.408-8 of the proposed regulations provides that a surviving spouse may elect to treat an IRA of her deceased spouse as her own. Q&A A-4 lists actions by which a surviving spouse makes said election. However, Q&A A-4 does not provide the exclusive methods by which a surviving spouse so elects.

Generally, if the proceeds of a decedent's IRA are payable to an estate, are made payable to the personal representative of the estate, and then are transferred by direction of the representative to an IRA set up and maintained in the name of the decedent's surviving spouse, beneficiary of the residuary bequest under the decedent's will, said surviving spouse shall be treated as having received the IRA proceeds from the estate and not from the decedent. Accordingly, such surviving spouse shall, generally, not be eligible to roll over (or have transferred) said distributed IRA proceeds into her own IRA.

However, in a case where a surviving spouse is the sole personal representative of the decedent's estate with the authority to allocate estate property between and among bequests under a decedent's will, the surviving spouse, as personal representative, allocates a portion or all of decedent's IRA to the residuary bequest under his will, and the surviving spouse is the sole beneficiary of a portion of said residuary bequest, the surviving spouse will be treated as having received the IRA proceeds, to the extent used to satisfy her portion of the residuary bequest under the will, from the decedent and not from his estate.

Thus, under the facts stated above, Taxpayer B is to be treated as having received the IRA X proceeds, to the extent they satisfy her residuary bequest under Taxpayer A's will, from Taxpayer A, and accordingly is to be treated as the payee and beneficiary of IRA X for purposes of Code sections 408(d)(1) and 408(d)(3).

Therefore, with respect to your ruling requests, we conclude as follows:

(1) That, to the extent IRA X is used to satisfy the bequest to Taxpayer B under Article III of Taxpayer A's Last Will and Testament, IRA X is not an inherited IRA as that term is defined in Code section 408(d)(3)(C)(i); and

(2) to the extent that the IRA X distribution is transferred to an IRA set up and maintained in the name of Taxpayer B, said transferred amounts will not be included in Taxpayer B's gross income for the year in which transferred.

This ruling letter assumes that IRA X either is or was qualified under Code section 408(a) at all times relevant thereto. It also assumes that the IRA to be set up by Taxpayer B, which will hold the amounts transferred from IRA X, will also meet the requirements of Code section 408(a) at all times relevant thereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Pursuant to a power of attorney on file in this office, copies of this letter ruling are being sent to your authorized representative(s).

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Form 437